

**Title 23: TRANSPORTATION**  
**Chapter 410: DEPARTMENT OF TRANSPORTATION**

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**Maine Revised Statutes**  
**Title 23: TRANSPORTATION**  
**Chapter 410: DEPARTMENT OF TRANSPORTATION**

**Subchapter 1: GENERAL PROVISIONS**

**§4201. DEPARTMENT; COMMISSIONER**  
*(REPEALED)*

SECTION HISTORY

1971, c. 498, §1 (NEW). 1971, c. 593, §15 (RP).

**§4202. SHORT TITLE**

This chapter may be known and cited as the Maine Transportation Act. [2011, c. 420, Pt. A, §16 (AMD).]

SECTION HISTORY

1971, c. 593, §16 (NEW). 1971, c. 622, §§77-C, 77-E (AMD). 2011, c. 420, Pt. A, §16 (AMD).

**§4203. DEFINITIONS**

The following terms, when used in this chapter, have the following meanings, unless the context otherwise requires. [2011, c. 420, Pt. A, §17 (AMD).]

**1. Commissioner.** "Commissioner" means the Commissioner of Transportation.

[1971, c. 593, §16 (NEW).]

**2. Department.** "Department" means the Department of Transportation.

[1971, c. 593, §16 (NEW).]

**3. Transportation.** "Transportation" means any form of transportation for people or goods within, to or from the State, whether by highway, air, water or rail.

[1971, c. 593, §16 (NEW).]

SECTION HISTORY

1971, c. 593, §16 (NEW). 1971, c. 622, §§77-D, 77-E (AMD). 2011, c. 420, Pt. A, §17 (AMD).

**§4204. DECLARATION OF POLICY**

It is declared to be the policy of the State of Maine that adequate, safe and efficient transportation facilities and services are essential to the economic growth of the State and the well-being of its people and that the planning and development of such facilities and services shall be coordinated by a state department of transportation with overall responsibility for balanced transportation policy and planning. [1971, c. 593, §16 (NEW).]

SECTION HISTORY

1971, c. 593, §16 (NEW).

## **§4205. DEPARTMENT; COMMISSIONER**

There is created and established the Department of Transportation to consist of a Commissioner of Transportation appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over transportation and to confirmation by the Legislature, who shall serve at the pleasure of the Governor. [1981, c. 698, §106 (RPR).]

**1.**

[ 1981, c. 456, Pt. A, §87 (RP) .]

**2.**

[ 1981, c. 456, Pt. A, §87 (RP) .]

**3.**

[ 1981, c. 456, Pt. A, §87 (RP) .]

**4.**

[ 1981, c. 698, §106 (RP) .]

**5.**

[ 1981, c. 698, §106 (RP) .]

**6.**

[ 1981, c. 98, §2 (RP) .]

**7.**

[ 1981, c. 98, §2 (RP) .]

### **SECTION HISTORY**

1971, c. 593, §16 (NEW). P&SL 1973, c. 214, §1 (AMD). 1973, c. 788, §105 (AMD). 1975, c. 580, §3 (AMD). 1975, c. 771, §257 (RPR). 1981, c. 98, §§1,2 (AMD). 1981, c. 456, §A87 (AMD). 1981, c. 698, §106 (RPR).

## **§4206. DUTIES OF COMMISSIONER**

**1. Duties.** The commissioner shall have the following general powers, duties and responsibilities:

A. To develop for the State, comprehensive, balanced transportation policy and planning as will meet the present and future needs for adequate, safe and efficient transportation facilities and services; [1971, c. 593, §16 (NEW).]

B. To assist in the development and operation of transportation facilities and services in the State; [1971, c. 593, §16 (NEW).]

C. To promote the coordinated and efficient use of all available and future modes of transportation; [1971, c. 593, §16 (NEW).]

D. To exercise and perform such other functions, powers and duties as shall have been or may be from time to time conferred or imposed by law, including all the functions, powers and duties assigned and transferred to the Department of Transportation from and as now imposed by law or otherwise conferred on these units designated in section 4205; [1971, c. 593, §16 (NEW).]

E. To appear as chief spokesman for the State before such national, regional, state and local agencies, groups or organizations including regulatory agencies as he deems necessary to enhance and promote the transportation interest of Maine, to counsel, advise and participate for the furtherance of the intent and purpose of this chapter; [1971, c. 593, §16 (NEW).]

F. To stimulate active support for and to develop, administer and promote transportation safety action programs throughout the State of Maine and to formulate and recommend to the Legislature specific measures for these purposes; [1971, c. 593, §16 (NEW).]

G. To establish a system of scenic highways in the State of Maine and preserve the scenic values along the system of highways; to develop and adopt procedures for the designation and development of that system of scenic highways and the preservation of the scenic value in the highway corridor and in the implementation of this intent and purpose consider the scenic value, safety aspects, economic implications, preservation of scenic value and compatibility with other national, regional and local conservation plans; [1971, c. 593, §16 (NEW).]

H. To acquire, construct, operate and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports and harbors; to operate and maintain the port facilities as now within or as may hereafter come within the jurisdiction of the Department of Transportation; and to oversee the administration of the Maine State Pilotage Commission; [1997, c. 727, Pt. C, §5 (AMD).]

I. To accept and receive and be the sole administrator of all federal or other moneys for and in behalf of this State or any political subdivision thereof now or hereafter available for purposes of transportation or which would further the intent and specific purposes of this chapter; [1983, c. 310, §1 (AMD).]

J. To oversee matters relating to railroad safety, provided that jurisdiction of the commissioner shall in no way diminish, infringe upon or replace the jurisdiction of the United States Department of Transportation, Federal Railroad Administration with regard to employee safety; [1983, c. 310, §2 (AMD).]

M. Acting upon the advice of the State Tax Assessor, to negotiate a compact with other states, the District of Columbia and Canadian provinces for the administration of user license fees on condition that the compact provides for:

- (1) The collection of the annual user license fee for any other state or province by the state or province in which the motor truck is registered;
- (2) The disbursement of revenues due to other states or provinces subject to the compact;
- (3) The free exchange of information between and among the states or provinces subject to the compact; and
- (4) The establishment of identification tags or decals.

The compact must provide for reciprocal enforcement of the laws establishing the annual user license fees and for the auditing of all books, records and logs of the operator of a motor truck by the state or province in which the motor truck is registered, which pertains to travel in it and any other state or province subject to the compact; [2005, c. 277, §1 (AMD).]

N. To make contracts and enter into agreements with and make assurances and certifications to the Maine Turnpike Authority, and other 3rd parties, necessary in connection with determination of department projects and the issuance of bonds or obligations pursuant to section 1968, subsection 2-A; and [2011, c. 302, §20 (AMD).]

O. To bring before the joint standing committee of the Legislature having jurisdiction over transportation matters for review and approval any proposal that would alter the current land use, ownership or jurisdiction of lands owned by the State within the Port of Seaport presently under the jurisdiction of the department. [2005, c. 277, §3 (NEW).]

[ 2011, c. 302, §20 (AMD) .]

**2. Organization.** The commissioner shall organize the department into such bureaus, divisions and other units as he deems necessary to fulfill the duties of the department, provided at all times there shall be the following bureaus:

A. Bureau of Finance and Administration; [1981, c. 45, §2 (RPR).]

C. Bureau of Planning; [1981, c. 45, §2 (RPR).]

D. Bureau of Project Development; and [1981, c. 45, §2 (RPR).]

E. Bureau of Maintenance and Operations. [1981, c. 45, §2 (RPR).]

[ 1995, c. 504, Pt. B, §7 (AMD) .]

**3. Advisory boards.** The commissioner, subject to approval by the Governor, shall organize and create such advisory committees and boards to serve at the pleasure of the commissioner for such terms and purposes as are deemed to be in the best interest of furthering the intent and purposes of this chapter. Such committees and boards shall be made up of persons especially skilled, knowledgeable or experienced in some phase of transportation. The commissioner shall fix the compensation for those who serve on such boards and committees with the consent and approval of the Governor.

[ 1975, c. 771, §258 (AMD) .]

**4. Personnel.** The commissioner may appoint such deputies, directors, assistants, general counsel and other officers and employees as may be needed for the performance of his duties. These appointments shall be subject to the Civil Service Law, except for the following who shall serve at the pleasure of the commissioner: Deputy Commissioners of Transportation; Chief Counsel, Bureau of Legal Services; Assistant to the Commissioner; and Assistant to the Commissioner for Public Information.

[ 1985, c. 785, Pt. B, §105 (AMD) .]

**5. Rules and regulations.** The commissioner may prescribe and promulgate all necessary rules and regulations in order to fulfill the purposes of this Title.

[ 1971, c. 593, §16 (NEW) .]

**6. Hearings.** The commissioner may conduct investigations, inquiries and hearings concerning all matters within the jurisdiction of the department. The commissioner may administer oaths and affirmations, certify to all official acts, issue subpoenas and compel the attendance and testimony of witnesses and the production of papers, records, books and documents and if any person refuses to attend, testify or produce papers, records, books and documents as ordered, a Justice of the Superior Court, upon application of the commissioner, may make such order as is appropriate to aid in enforcement of the order.

[ 1971, c. 593, §16 (NEW) .]

**7. Delegation.** The commissioner may delegate to deputies, directors, assistants and other officers and employees of the department such of his duties as he deems appropriate.

[ 1971, c. 593, §16 (NEW) .]

**8. Experimental projects.** The commissioner may engage in such experimental projects as he deems will contribute to furthering the purposes of this chapter.

[ 1971, c. 593, §16 (NEW) .]

**9. Experimental vehicle permits.** The Commissioner of Transportation, with the advice of the Commissioner of Public Safety and the Director of Motor Vehicles, may establish a program providing for the issuance of temporary experimental vehicle permits on a discretionary basis, each for a period not exceeding 2 years, upon proper application in writing from a trucker representing a significant sector of the trucking industry. The permits are to provide for the operation and the evaluation of the operation of experimental vehicles that have a length, width, height, weight and other conditions beyond that specified in Title 29-A, over any nonlimited way or bridge. These permits carry no fee. Registration must be assessed for the applicable road limit exclusive of general or special commodity permits, despite expected operation beyond these limits, in an experimental mode. Multistate experiments are to be encouraged. Registration in another state in the context of a regional multistate experiment will be honored without the necessity of acquiring a Maine registration. These permits may be granted only within the context of a structured joint industry-government evaluation program, including preparatory off-road performance tests, strictly controlled operational testing on the highway system and both in-process and final evaluation reports covering productivity, operating characteristics and safety. Additional reports may be required by the commissioner if considered necessary during the experimental phase. The Commissioner of Transportation shall issue these permits on a limited basis and only if the commissioner judges that a significant potential exists for increased productivity without undue compromise in safety by the eventual legal general operation of the experimental vehicle, without permit, on the highway system. No commitment to that eventual operation is implied by the issuance of the temporary experimental vehicle permit. The Commissioner of Transportation shall ratify, at the commissioner's discretion, all conditions of the experimental programs proposed, including, but not limited to, preparatory off-road vehicle tests, time limits, vehicle dimensions, axle and gross weight limits, routing, insurance and reporting provisions. The commissioner may terminate any evaluation at any time if in the commissioner's judgment the operation of the vehicle poses an undue threat to public safety or the integrity of the highway system or if the conditions of the permit are violated.

The commissioner shall submit a report biennially to the joint standing committee of the Legislature having jurisdiction over transportation before the first regular session of each Legislature. This report must discuss the progress of any experimental vehicle evaluations and contain recommendations, if any, for legislation leading to their eventual general use on the highway system. If during the previous biennium there has been no activity relating to the evaluation and permitting of experimental vehicles, the reporting requirement is waived.

[ 1999, c. 152, Pt. H, §1 (AMD) .]

#### SECTION HISTORY

1971, c. 593, §16 (NEW). 1973, c. 186, §2 (AMD). 1973, c. 685, (AMD). 1975, c. 771, §258 (AMD). 1977, c. 341, §1 (AMD). 1977, c. 658, §§3-5 (AMD). 1977, c. 674, §22 (AMD). 1979, c. 127, §155 (AMD). 1979, c. 505, §§1-3 (AMD). 1981, c. 45, §2 (AMD). 1981, c. 492, §§D3-D5,9 (AMD). 1981, c. 505, §5 (AMD). 1981, c. 591, (AMD). 1981, c. 595, §4 (AMD). 1983, c. 310, §§1-4 (AMD). 1983, c. 477, Pt. E, Subpt. 26, §§8 (AMD). 1983, c. 489, §11 (AMD). 1985, c. 506, §A48 (AMD). 1985, c. 741, (AMD). 1985, c. 785, §B105 (AMD). 1987, c. 109, (AMD). 1995, c. 65, §A66 (AMD). 1995, c. 65, §§A153,C15 (AFF). 1995, c. 504, §§B7,C8,9 (AMD). 1997, c. 727, §C5 (AMD). 1999, c. 152, §H1 (AMD). 2005, c. 277, §§1-3 (AMD). 2011, c. 302, §20 (AMD).

## **§4207. RAILROADS; LEASE OR PURCHASE OF CERTAIN RAILROAD LINES BY THE DEPARTMENT OF TRANSPORTATION**

*(REPEALED)*

### SECTION HISTORY

1975, c. 221, (NEW). 1975, c. 629, (AMD). 1979, c. 374, (AMD). 1983, c. 392, (AMD). 1985, c. 398, (AMD). 1987, c. 534, §§B13,B23 (AMD). 1989, c. 398, §4 (RP). 1989, c. 501, §P28 (AMD). 1989, c. 600, §§9, 10 (AMD).

## **§4207-A. RAILROADS; ACQUISITION OF RAILROAD OPERATING EQUIPMENT BY THE DEPARTMENT OF TRANSPORTATION**

*(REPEALED)*

### SECTION HISTORY

1979, c. 650, (NEW). 1989, c. 398, §5 (RP).

## **§4208. DEFENSIVE DRIVING COURSES; FEES**

The Department of Public Safety is authorized to conduct defensive driving courses for the purpose of promoting highway safety and to charge a registration fee of \$35 to participants in the defensive driving courses conducted under the auspices of the department. The fee must be used to cover the cost of conducting the courses. Any balances remaining at the end of the fiscal year may not lapse but must be carried forward to be used for the purposes stated in this section. [2007, c. 295, §1 (AMD).]

The course must include instruction in the existence and the practical purpose of parking laws and ordinances for persons with disabilities. [1995, c. 505, §10 (AMD); 1995, c. 505, §22 (AFF).]

### SECTION HISTORY

1977, c. 423, §B1 (NEW). 1981, c. 292, (AMD). 1989, c. 616, §1 (AMD). 1989, c. 721, §2 (AMD). 1995, c. 505, §10 (AMD). 1995, c. 505, §22 (AFF). 2007, c. 295, §1 (AMD).

## **§4209. PUBLIC TRANSPORTATION ADMINISTRATION**

**1. Geographic regions.** The Department of Transportation shall divide the State into a number of geographic regions for regional distribution of state-administered transportation funds. Upon designation of the geographic regions, a regional public transportation agency must be selected from each region to formulate a biennial regional operations plan. Selection of regional public transportation agencies must be by the Department of Transportation in collaboration with the committee established in subsection 1-A. The Department of Transportation shall establish a schedule for submittal of the biennial regional operations plan and shall reference these plans in its biennial transportation improvement plan submitted to the Legislature.

[ 2009, c. 130, §1 (AMD) .]

**1-A. Interagency Transportation Coordinating Committee.** The Interagency Transportation Coordinating Committee, referred to in this section as "the committee," is established to promote efficiency, cooperative effort and strategic planning for public transportation between the Department of Transportation, the Department of Labor and the Department of Health and Human Services.

A. The committee consists of the Commissioner of Transportation, the Commissioner of Labor and the Commissioner of Health and Human Services or the designees of the commissioners. [2009, c. 130, §2 (NEW).]



B. The committee shall meet at least twice each year. [2009, c. 130, §2 (NEW).]

C. The Commissioner of Transportation shall designate the chair of the committee. [2009, c. 130, §2 (NEW).]

D. The committee shall designate a catchment area for MaineCare transportation providers. [2009, c. 130, §2 (NEW).]

E. The committee shall submit a report on its deliberations and any recommendations by February 15th each year to the Governor and the joint standing committee of the Legislature having jurisdiction over public transportation matters. [2009, c. 130, §2 (NEW).]

[2009, c. 130, §2 (NEW).]

**2. Biennial regional operations plan.** The biennial regional operations plan submitted by each regional public transportation agency must provide for the following:

A. Maximum feasible coordination of funds among all state agencies that sponsor transportation in the region; [1987, c. 428, §1 (AMD).]

B. Development and maintenance of a permanent and effective public transportation system, with particular regard to riders who are low-income or elderly or who have disabilities; [2009, c. 130, §3 (AMD).]

C. Participation of private transit operators in the service, to the greatest extent possible; [2009, c. 130, §3 (AMD).]

D. Conformity with general operations requirements as may be prescribed by the commissioner; and [2009, c. 130, §3 (AMD).]

E. Compliance with any appropriate federal regulations, including but not limited to the federally required locally coordinated plan. [2009, c. 130, §3 (NEW).]

In years in which no biennial plan is required, amendments to the effective operations may be submitted. Approval of each regional operations plan must be by the Department of Transportation in collaboration with the committee. Upon approval, all agencies, groups or organizations named to participate in the provision of service in accordance with a regional operations plan are eligible to receive funds administered by the Department of Transportation and the Department of Health and Human Services.

[2009, c. 130, §3 (AMD).]

**3. State assistance.** Within the limits of available funding, the department shall provide assistance as follows:

A. Planning and technical assistance, information transfer, capital and operations planning, performance monitoring and evaluation, quality assurance, accounting, assistance with management information systems and service reporting to a regional operations plan drafter or transportation provider and securing of provider compliance with the requirements of other state agencies in these areas; [1987, c. 428, §2 (AMD).]

A-1. Act as mediator and, if necessary, final arbiter of disputes between state agencies and transportation providers regarding service; [1987, c. 428, §2 (NEW).]

A-2. In consultation with the Bureau of Insurance, advise transportation providers regarding the liability of volunteer drivers; [1991, c. 859, §1 (NEW).]

B. Capital assistance to transportation providers for up to 100% of the nonfederal share required by federal assistance programs; [1991, c. 103, (AMD).]

C. Operating assistance to transportation providers in an amount up to 1/2 of the operating deficit incurred in fulfillment of the biennial regional operations plan; and [1987, c. 428, §2 (AMD).]

D. Notwithstanding any other provision of law and except as funds are necessary to carry out the object of this section, funds appropriated for public transportation shall not lapse at the end of a fiscal year, but shall be carried forward from year to year to be expended for the same purpose. [1985, c. 174, Pt. E, (NEW).]

[ 1991, c. 859, §1 (AMD) .]

**4. Human services assistance; priorities.** The committee shall act to coordinate purchase of service contracts and serve in an advisory capacity to the department in matters concerning public transportation. In the event that transportation funds for human services programs are insufficient for full implementation of the human services portion of an approved biennial regional operations plan, priorities established by the Department of Health and Human Services determine the priority clients that must be initially served by human services funds. Members of the committee and their contractors shall actively engage local transportation providers in the planning of new services that are expected to have a transportation component. The Department of Health and Human Services and the Department of Labor shall ensure that any new service to be provided is adequately funded to cover the costs of the transportation component of the program.

[ 2009, c. 130, §4 (AMD) .]

**5. Intercity service.** Intercity service shall be service designated as such in a public transportation plan developed by the department. Intercity service planning shall fulfill the requirements set forth in subsection 2 and shall address public transportation needs that cannot be met by regional operations planning. The State may contribute to the nonfederal costs of intercity service.

[ 1979, c. 505, §4 (NEW) .]

**6. Letters of credit; reporting requirements; general powers.** To further the purposes of this section, the Department of Transportation may do the following:

A. Make available letters of credit or other appropriate assistance to transportation providers faced with unavoidable difficulties in securing day-to-day operating expenses; [1979, c. 505, §4 (NEW) .]

B. Investigate all practicable ways that reporting requirements might be unified to reduce the paper workload for state and regional public transportation administration; and [1979, c. 505, §4 (NEW) .]

C. Exercise all powers necessary, convenient or incidental to assuring the development and maintenance of effective public transportation service throughout the State. [1979, c. 505, §4 (NEW) .]

[ 1979, c. 505, §4 (NEW) .]

## **7. Review.**

[ 1987, c. 428, §4 (RP) .]

### SECTION HISTORY

1979, c. 505, §4 (NEW). 1981, c. 493, §2 (AMD). 1981, c. 559, (AMD). 1983, c. 812, §144 (AMD). 1985, c. 174, §E (AMD). 1987, c. 428, §§1-4 (AMD). 1991, c. 103, (AMD). 1991, c. 859, §1 (AMD). RR 1995, c. 2, §§47,48 (COR). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §§83,84 (COR). 2009, c. 130, §§1-4 (AMD).

## §4210. TRANSPORTATION FACILITIES FUND

**1. Fund established.** The Transportation Facilities Fund, referred to in this section as the "fund," is established as a nonlapsing fund through the Department of Administrative and Financial Services, Office of the State Controller as an internal service fund administered by the Department of Transportation.

[ 2001, c. 83, Pt. C, §1 (NEW); 2003, c. 600, §4 (REV) .]

**2. Fund services.** Money deposited in the fund may include, but is not limited to, money transferred to the account from within the department, money received from the units within the department using the rental spaces provided by the fund and earnings by the fund from the Treasurer of State's cash pool.

[ 2001, c. 83, Pt. C, §1 (NEW) .]

**3. Distribution from fund.** Money distributed from the fund may be used for the purpose of purchasing, operating, maintaining, improving, repairing, constructing and managing buildings, including permanent storage facilities, garages and field office buildings, except for buildings and facilities under the supervision of the Department of Administrative and Financial Services, Bureau of General Services.

[ 2001, c. 83, Pt. C, §1 (NEW) .]

**4. Leased space.** Use of the fund in order to lease space to the operating units of the department must comply with the rate schedule approved by the commissioner. Lease payments must provide for repair costs, operating costs, necessary capital investment, working capital for the fund and must be developed and levied in accordance with the provisions of Federal Office of Management and Budget Circular A-87 or its successor document.

[ 2001, c. 83, Pt. C, §1 (NEW) .]

**5. Budget.** Upon recommendation of the State Budget Officer and approval by the Governor, prior legislatively authorized budgets within the department may be realigned to ensure adequate funding for projected lease payments. Within 10 days of any realignment of a prior legislatively authorized budget, the commissioner shall submit a written report that details the realignments to the joint standing committee of the Legislature having jurisdiction over transportation matters. After realignment of the budgets, full and normal budgeting will occur for the fund in future years. Expenditures from the fund are subject to allocations that must be approved by the Legislature.

[ 2001, c. 83, Pt. C, §1 (NEW) .]

### SECTION HISTORY

2001, c. 83, §C1 (NEW). 2003, c. 600, §4 (REV).

## §4210-A. PAYMENT FOR COST OF RELOCATING UTILITY FACILITIES UNDERGROUND IN FEDERALLY DESIGNATED HISTORIC DISTRICTS ON FEDERAL AID HIGHWAYS

**1. Reimbursement.** The department, in the course of delivering the federal surface transportation program, 23 United States Code, Section 133 (2005) may reimburse a National Register Historic District or the community in which the National Register Historic District is located for the portion of the cost to move or relocate overhead utilities underground to the extent that such payments by the department are eligible for reimbursement under the federal surface transportation program pursuant to 23 United States Code, Section 133(b)(8) (2005). To be eligible for this reimbursement, the project must be located in a National Register Historic District and on the National Highway System and may not increase the department's cost or liability in complying with the National Historic Preservation Act, 16 United States Code, Sections 470 to

470x-6 (2005) or with 49 United States Code, Section 303 (2005). For the purposes of this section, "National Register Historic District" means a district that is individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 United States Code, Sections 470 to 470x-6 (2005).

The amount paid in any biennium under this section may not exceed federal surface transportation program funds available under 23 United States Code, Section 133(b)(8) (2005) to reimburse the State in that biennium.

[ 2007, c. 306, §4 (AMD) .]

**2. Rules.** The department may adopt rules necessary to implement this section. The rules must be consistent with any applicable federal regulations relating to the cost of relocation and with rules adopted pursuant to section 255. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 282, §1 (NEW) .]

#### SECTION HISTORY

2005, c. 282, §1 (NEW). 2007, c. 306, §4 (AMD).

## §4210-B. MULTIMODAL TRANSPORTATION FUND

**1. Establishment of fund.** The Multimodal Transportation Fund, referred to in this section as "the Multimodal Transportation Fund" is established as an Other Special Revenue Funds program through the Department of Administrative and Financial Services. Funds appropriated, allocated, transferred or deposited in the account accrue interest earnings that must be used within the Multimodal Transportation Fund.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

**2. Establishment of program.** The department shall establish the Multimodal Transportation Fund program through the Department of Administrative and Financial Services, Office of the State Controller.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

**3. Use of funds.** The money deposited into and disbursed from the Multimodal Transportation Fund must be used for the purposes of purchasing, operating, maintaining, improving, repairing, constructing and managing the assets of multimodal forms of transportation, including, but not limited to, transit, aeronautics, marine and rail, of the State, municipalities and multimodal providers.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

#### **4. Disbursements from fund.**

[ 2011, c. 649, Pt. E, §2 (RP) .]

**5. Other fund sources.** The Multimodal Transportation Fund may accept funds from other sources, including, but not limited to, the Federal Rail Administration, to carry out the provisions of this section.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

**6. Financial management.** All assets including the cash balance, liabilities and equity in the Augusta State Airport Fund must be transferred to the Multimodal Transportation Fund and accounted for in a manner prescribed by the Department of Administrative and Financial Services, Office of the State Controller.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

## **7. Sales tax revenue.**

[ 2011, c. 649, Pt. E, §2 (AMD); T. 23, §4210-B, sub-§7 (RP) .]

**7-A. Sales tax revenue.** Beginning July 1, 2012 and every July 1st thereafter, the State Controller shall transfer to the Multimodal Transportation Fund an amount, as certified by the State Tax Assessor, that is equivalent to 100% of the revenue from the tax imposed on the value of rental of a pickup truck or van with a gross weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles and the value of rental for a period of less than one year of an automobile pursuant to Title 36, section 1811 for the first 6 months of the prior fiscal year. Beginning on October 1, 2012 and every October 1st thereafter, the State Controller shall transfer to the Multimodal Transportation Fund an amount, as certified by the State Tax Assessor, that is equivalent to 100% of the revenue from the tax imposed on the value of rental of a pickup truck or van with a gross weight of less than 26,000 pounds rented from a person primarily engaged in the business of renting automobiles and the value of rental for a period of less than one year of an automobile pursuant to Title 36, section 1811 for the last 6 months of the prior fiscal year. The tax amount must be based on actual sales for that fiscal year and may not consider any accruals that may be required by law.

[ 2011, c. 649, Pt. E, §2 (AMD) .]

## **SECTION HISTORY**

2005, c. 457, §GGG3 (NEW). 2007, c. 677, §1 (AMD). 2011, c. 380, Pt. G, §§1, 2 (AMD). 2011, c. 380, Pt. G, §3 (AFF). 2011, c. 420, Pt. J, §§1, 2 (AMD). 2011, c. 420, Pt. J, §3 (AFF). 2011, c. 649, Pt. E, §2 (AMD). MRSA T. 23, §4210-B; §7 (AMD).

## **§4210-C. MARINE HIGHWAY ACCOUNT**

**1. Establishment of account.** The department shall establish, through the Department of Administrative and Financial Services, Office of the State Controller, the Marine Highway account, referred to in this section as "the account," in the Highway Fund.

[ 2005, c. 457, Pt. GGG, §3 (NEW) .]

**2. Purpose of account.** The purpose of the account is to allow the Highway Fund to provide support to the Maine State Ferry Service that was previously provided by the General Fund because ferries are an integral part of the highway system and carry motor vehicles and are the only method of vehicular transportation available to and from the islands. The state support to the Marine Highway account may not exceed 50% of the budgeted revenues that support the operating cost of the Maine State Ferry Service.

[ 2005, c. 664, Pt. C, §1 (AMD) .]

**3. Calculation.** The account is not considered a General Fund appropriation or Highway Fund allocation for highway purposes in order to calculate the annual funding for the Local Road Assistance Program pursuant to section 1803-B.

[ 2011, c. 652, §10 (AMD); 2011, c. 652, §14 (AFF) .]

SECTION HISTORY

2005, c. 457, §GGG3 (NEW). 2005, c. 664, §C1 (AMD). 2011, c. 652, §10 (AMD). 2011, c. 652, §14 (AFF).

## **§4210-D. ACCOUNTING**

The department shall comply with accounting policies and procedures promulgated by the Department of Administrative and Financial Services, Office of the State Controller. Any changes in accounting methodology proposed by the department must be approved by the Office of the State Controller. [ 2005, c. 457, Pt. GGG, §3 (NEW). ]

SECTION HISTORY

2005, c. 457, §GGG3 (NEW).

## **§4210-E. TRANSPORTATION EFFICIENCY FUND**

*(REPEALED)*

SECTION HISTORY

2009, c. 655, Pt. B, §2 (NEW). 2011, c. 652, §14 (AFF). 2011, c. 652, §11 (RP).

## **Subchapter 2: INSPECTION AND INVESTIGATION OF RAILROADS**

## **§4211. RAILROADS EXAMINED; ANNUAL REPORT**

*(REPEALED)*

SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

## **§4211-A. APPLICATION FOR FINANCIAL ASSISTANCE**

*(REPEALED)*

SECTION HISTORY

1987, c. 792, §1 (NEW). 1989, c. 398, §6 (RP). 1989, c. 502, §A91 (AMD).

## **§4212. CERTIFICATE OF SAFETY FOR PASSENGER TRAINS**

*(REPEALED)*

SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

## **§4213. EXPERIENCED ENGINEER TO EXAMINE BRIDGES**

*(REPEALED)*

SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

#### **§4214. MANAGERS NOTIFIED WHEN ROAD UNSAFE** ***(REPEALED)***

##### SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

#### **§4215. COURT PROCEEDINGS FOR NONCOMPLIANCE** ***(REPEALED)***

##### SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

#### **§4216. PASSENGER TRAINS PROHIBITED FROM RUNNING OVER UNSAFE ROADS** ***(REPEALED)***

##### SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

#### **§4217. CROSSINGS AND BRIDGES** ***(REPEALED)***

##### SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

#### **§4218. SAFETY PROVISIONS** ***(REPEALED)***

##### SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

#### **§4219. ORDERS OF THE COMMISSIONER** ***(REPEALED)***

##### SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

#### **§4220. PRIOR ORDERS AND RULES EFFECTIVE** ***(REPEALED)***

##### SECTION HISTORY

1977, c. 341, §2 (NEW). 1987, c. 141, §B22 (AMD). 1989, c. 398, §6 (RP).

#### **§4221. INVESTIGATION AND REPORTS OF ACCIDENTS** ***(REPEALED)***

##### SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

### Subchapter 3: TRACK AND EQUIPMENT INSPECTION PROGRAM

## **§4231. PARTICIPATION IN THE FEDERAL RAILROAD ADMINISTRATION TRACK AND EQUIPMENT SAFETY AND INSPECTION PROGRAM**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 341, §2 (NEW). 1989, c. 398, §6 (RP).

### Subchapter 4: CONTRACTS

## **§4241. DEFINITIONS**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 313, §6 (NEW).]

**1. Transportation infrastructure.** "Transportation infrastructure" means infrastructure related to all modes of transportation, including highways, bridges, railroads, ferries, mass transit, airports and bicycle and pedestrian facilities, as well as all buildings, utilities, facilities and other appurtenances related to those modes.

[ 2005, c. 313, §6 (NEW) .]

**2. Transportation-related services.** "Transportation-related services" means all services necessary or convenient to discharge the powers, duties and responsibilities of the department and the commissioner as provided by law including those provided in section 4206. These services include all services necessary or convenient to plan, design, engineer, construct, improve, demolish, maintain or use transportation infrastructure. These services may include, but are not limited to, planning and feasibility studies, engineering, surveying, mapping, environmental services, architectural-related services, appraisal, title services, right-of-way services, project and program management, construction support services and equal opportunity and civil rights services.

[ 2005, c. 313, §6 (NEW) .]

#### SECTION HISTORY

2005, c. 313, §6 (NEW).

## **§4242. CONTRACTS FOR TRANSPORTATION-RELATED SERVICES**

The department has full power in the procurement and letting of all contracts for transportation-related services. The department may award contracts for these services pursuant to procedures permitted by federal law. The department may solicit statements of qualifications and proposals, and award contracts for services based upon the criteria contained in the solicitations, only if the solicitations are posted electronically on the department's publicly accessible site on the Internet for at least 2 weeks or advertised in newspapers. If advertisements are published in newspapers, they must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done, if any such newspaper is circulated in that county. [2005, c. 313, §6 (NEW) .]



The department has the full power to maintain qualifications and performance data on firms and individuals that seek to provide transportation-related services. The commissioner may designate projects requiring additional project-specific prequalification standards and procedures for interested firms and individuals. [2005, c. 313, §6 (NEW).]

#### SECTION HISTORY

2005, c. 313, §6 (NEW).

### §4243. CONTRACTS FOR CONSTRUCTION AND MAINTENANCE

The department has full power in the procurement and letting of all contracts to construct, demolish or maintain transportation infrastructure. The department shall make, or cause to be made, all surveys, plans, estimates, specifications and contracts for all proposed work. If the work is to be contracted, the department shall, except as otherwise provided in this Title, advertise for bids for the proposed work electronically through the department's publicly accessible site on the Internet or through advertisements in newspapers. If advertisements are published in newspapers, advertisements must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done if any such newspaper is circulated in that county. The advertisement must state the place where the bidders may purchase or examine the plans and specifications and the time and place where the bids for the work will be received by the department. Each bidder must accompany its bid with a bid guaranty in accordance with the department's specifications. All bids submitted must be publicly opened and read at the time and place stated in the advertisement. The department has the right to reject any bids and to advertise for new bids if, in the department's opinion, doing so is in the best interest of the department; otherwise, the department shall award the contract to the responsible bidder submitting the lowest bid. A town may submit bids for construction, demolition or maintenance of transportation infrastructure within that town's limits and is subject to all requirements prescribed for other contractors, except that a bond is not required of the town. The department may construct, demolish or maintain transportation infrastructure by day labor without advertising for bids and may, with the approval of the Governor, award contracts for the construction, demolition or maintenance of transportation infrastructure without advertising for bids if doing so is in the best interest of the State. [2005, c. 313, §6 (NEW).]

The department has the full power to prequalify bidders for construction, demolition and maintenance projects based on factors contained in the department's written prequalification procedures. The commissioner may designate projects requiring project-specific prequalification standards and procedures for bidders. [2005, c. 313, §6 (NEW).]

The department may adopt its own standard contract specifications. The department's standard specifications must be used in lieu of federally mandated contract clauses. [2005, c. 313, §6 (NEW).]

#### SECTION HISTORY

2005, c. 313, §6 (NEW).

### §4244. DESIGN-BUILD CONTRACTING

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Best value" means the highest overall value to the State, considering quality and cost. [2009, c. 648, Pt. B, §2 (NEW).]

B. "Design-build contracting" means a method of project delivery whereby a single firm is contractually responsible for performing design, construction and related services. [2009, c. 648, Pt. B, §2 (NEW).]

C. "Major participant" means a firm that would have a major role in the design or construction of a project as specified by the department in its procurement documents. [2009, c. 648, Pt. B, §2 (NEW).]

D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel, building or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties and incidentals needed for a complete and functioning product. [2009, c. 648, Pt. B, §2 (NEW).]

E. "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions. [2009, c. 648, Pt. B, §2 (NEW).]

F. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal. [2009, c. 648, Pt. B, §2 (NEW).]

G. "Public notice" means notice given electronically through the department's publicly accessible website or through advertisements in newspapers. If notice is to be given exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed project is located if any such newspaper is circulated in that county. [2009, c. 648, Pt. B, §2 (NEW).]

H. "Quality" means those features that the department determines are most important to the project. Quality criteria include design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct and other factors that the department considers to be in the best interest of the State. [2009, c. 648, Pt. B, §2 (NEW).]

[ 2009, c. 648, Pt. B, §2 (NEW) .]

**2. Authorization.** Notwithstanding section 4243 or any other provision of law, the department may use design-build contracting to deliver projects. The department may evaluate and select proposals on either a best-value or low-bid basis. If the scope of work requires substantial engineering judgment, the quality of which may vary significantly, as determined by the department, then the basis of award must be the best value.

The department retains the authority to terminate the contracting process at any time, to reject any proposal, to waive technicalities or to solicit new proposals if the department determines that doing so is in the best interest of the State.

[ 2009, c. 648, Pt. B, §2 (NEW) .]

**3. Prequalification.** A proposer must be prequalified to be eligible to submit a proposal. A proposer must be prequalified by a project-specific request-for-qualifications process described in this subsection, or a proposer may be a team formed of contractors and designers that are each prequalified separately for design-build contracting in accordance with ongoing prequalification procedures established by the department. The department shall specify the method of prequalification in its discretion, except that if the basis of award is the best value, then prequalification must be through a project-specific request-for-qualifications process.

The department shall give public notice of a project-specific request-for-qualifications process. The department shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. Interested firms shall supply, for themselves and all major participants, all information required by the department. The department may investigate and verify all information received. All financial information, trade secrets or other information customarily regarded as confidential business information submitted to the department is confidential. The department shall evaluate and rate all firms submitting a conforming statement of qualifications and select the most qualified firms to receive a request for proposals.

The department may select any number of firms, except that, if the department fails to prequalify at least 2 firms, the department shall repeat the request-for-qualifications process or select a different project delivery method.

[ 2009, c. 648, Pt. B, §2 (NEW) .]

**4. Request for proposals.** If prequalification is through project-specific prequalification, the department shall issue a request for proposals to those firms prequalified. If prequalification is through ongoing prequalification procedures established by the department, the department shall give public notice of the request for proposals. The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that have a substantial impact on the cost or quality of the project and the project development process, as determined by the department. The request for proposals must include the criteria for acceptable proposals and must include a request-for-information process that allows for clarification of such criteria. For projects to be awarded on a best-value basis, the scoring process and quality criteria must also be contained in the request for proposals. The request for proposals may also provide for a process for the department to meet with each proposer individually to review conceptual technical elements of each proposal before full proposal submittal for the purposes of identifying design or other technical elements that are unacceptable to the department or that obviously would cause rejection of the proposal as nonresponsive. All such conceptual technical meetings, including submittals and responses, are confidential until award of the contract, but the department may issue addenda to all proposers to clarify design or other technical elements that will or will not be allowed. Upon award of the contract and after resolution of any procurement disputes, the department shall return documents submitted by unsuccessful proposers upon request. The request for proposals may also provide for a stipend upon specified terms to unsuccessful proposers that submit proposals conforming to all material request-for-proposals requirements as determined by the department.

[ 2009, c. 648, Pt. B, §2 (NEW) .]

**5. Low-bid award.** If the basis of the award is lowest cost, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously. The department shall first review technical proposals for responsiveness. The department shall award the contract to the proposer that submits a responsive proposal with the lowest price, if the proposal meets all material request-for-proposals requirements as determined by the department.

[ 2009, c. 648, Pt. B, §2 (NEW) .]

**6. Best-value award.** If the basis of the award is best value, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously.

The department shall open first each technical proposal and evaluate and score it based on the quality criteria contained in the request for proposals. The request for proposals may provide that the range between the highest and lowest quality score of responsive technical proposals must be limited to an amount certain. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential.

After completion of the review for responsiveness, the department shall publicly open and read each price proposal associated with each responsive technical proposal. The department shall calculate the overall value rating for each proposal, which is the total price divided by the quality score. The department shall award the contract to the proposer with the lowest price per quality score point, if the proposal meets all material request-for-proposals requirements as determined by the department.

[ 2009, c. 648, Pt. B, §2 (NEW) .]

**7. Procurement disputes.** The request for proposals must provide for resolution of disputes that may arise before award of the contract by including a dispute review board procedure in accordance with the department's standard specifications. Except in extraordinary circumstances as determined by the department, including emergency work or situations in which delay could result in the loss of funding, the request for proposals must include a provision that requires that the procurement process be suspended pending final resolution of such disputes. In cases involving such extraordinary circumstances when suspension of the procurement process does not occur, proposers that are not selected may seek monetary damages directly related to such nonselection.

[ 2009, c. 648, Pt. B, §2 (NEW) .]

#### SECTION HISTORY

2009, c. 648, Pt. B, §2 (NEW).

## Subchapter 5: PUBLIC-PRIVATE PARTNERSHIPS

### §4251. PUBLIC-PRIVATE PARTNERSHIPS; TRANSPORTATION PROJECTS

**1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership. [2009, c. 648, Pt. A, §1 (NEW) .]

B. "Project" means the initial capital development of a transportation facility. [2009, c. 648, Pt. A, §1 (NEW) .]

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter. [2009, c. 648, Pt. A, §1 (NEW) .]

D. "Transportation facility" means a facility that is or if developed would be within the jurisdiction of the department including a highway, bridge, railroad line, pier, airport, trail, ferry vessel, building or other improvement. [2009, c. 648, Pt. A, §1 (NEW) .]

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**2. Applicability.** This subchapter applies to a proposal or agreement for a private entity to form a public-private partnership when the department estimates that the initial capital cost of a project is \$25,000,000 or more or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls. Nothing in this section is intended to prohibit or otherwise affect programs that do not meet the criteria of this subsection.

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**3. Authorization.** Notwithstanding any other provision of law, the department is authorized to receive or solicit proposals to form a public-private partnership with respect to a transportation facility. Proposals must be reviewed in accordance with this subchapter. Upon approval of the Legislature as provided in this subchapter, the department may enter into an agreement.

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**4. Standards for review.** Before submitting a proposal to the Legislature for approval the department must find that the proposal meets the following standards.

A. The purpose of and need for the transportation facility must be consistent with the long-term planning of the department. [2009, c. 648, Pt. A, §1 (NEW).]

B. The private entity must have the financial, technical and operational capacity to discharge the responsibilities set forth in the proposal cost-effectively and responsibly as determined by the department. This capacity must include, but is not limited to, meeting department prequalification standards for professional engineering services and general contracting. [2009, c. 648, Pt. A, §1 (NEW).]

C. The proposed transportation facility must be owned, controlled, operated and maintained in a manner satisfactory to the department. [2009, c. 648, Pt. A, §1 (NEW).]

D. The proposal must be cost-effective in the long term. [2009, c. 648, Pt. A, §1 (NEW).]

E. The proposal must limit the use of state capital funding to less than 50% of the initial capital cost of the transportation facility and to the extent practicable minimize the use of transportation funding sources such as the Highway Fund, general obligation bonds supported by the Highway Fund, the TransCap Trust Fund under Title 30-A, section 6006-G and program funding provided by the Federal Highway Administration. [2009, c. 648, Pt. A, §1 (NEW).]

F. If the proposed transportation facility is to be supported by tolls or other user fees, the private entity must provide a traffic and revenue study prepared by an expert acceptable to the department and national bond rating agencies. The private entity must also provide a finance plan consistent with the traffic and revenue study that identifies the proposal costs, revenues by source, financing, major assumptions, internal rate of return on private investments and whether any government funds are assumed to deliver a cost-feasible project and that provides a total cash flow analysis beginning with implementation of the project and extending for the term of the agreement. [2009, c. 648, Pt. A, §1 (NEW).]

G. The proposal must demonstrate safeguards adequate to ensure that no significant additional costs or service disruptions would be borne by the traveling public and residents of the State if the private entity defaults or cancels the agreement. [2009, c. 648, Pt. A, §1 (NEW).]

H. The proposal must include a provision that any contractor performing construction work required by the agreement must furnish performance and payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of Title 14, section 871, subsection 4. [2009, c. 648, Pt. A, §1 (NEW).]

I. The proposal and the transportation facility must comply with all requirements of applicable federal, state and local laws and department rules, policies and procedures. [2009, c. 648, Pt. A, §1 (NEW).]

J. The proposal must identify the law enforcement jurisdictions and responsibilities relative to the transportation facility. [2009, c. 648, Pt. A, §1 (NEW).]

K. The proposal must provide that all reasonable costs of substantially affected local governments and utilities related to the transportation facility are borne by the private entity or are otherwise provided for to the satisfaction of the department. [2009, c. 648, Pt. A, §1 (NEW).]

L. [2013, c. 208, §1 (RP).]

[2013, c. 208, §1 (AMD).]

**5. Proposal and selection processes; solicited and unsolicited.** The department may request proposals from private entities for a public-private partnership for a transportation facility or may accept unsolicited proposals pursuant to this subsection.

A. If the department receives an unsolicited proposal and determines that it meets the standards in this subchapter, the department shall publish a notice of the receipt of the proposal on the department's publicly accessible website or through advertisements in newspapers. If a notice is published exclusively

in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed transportation facility is to be located if any such newspaper is circulated in that county. The notice must provide that the department will accept, for 120 days after the initial date of publication, proposals meeting the standards in subsection 4 from other private entities for transportation facilities that satisfy the same basic purpose and need. A copy of the notice must be mailed to each local government in the area affected by the proposal. [2009, c. 648, Pt. A, §1 (NEW).]

B. After the proposal or proposals have been received, and any public notification period has expired, the department shall rank the proposals in order of preference. In ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans and the need for state funds to deliver the project and discharge the agreement. The department shall undertake negotiations with the private entity submitting the 1st-ranked proposal. If the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with that entity and the department may negotiate with the other entities in order of the ranking of their proposals. If only one proposal is received, the department shall negotiate in good faith and, if the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations. [2009, c. 648, Pt. A, §1 (NEW).]

C. The department may require that the private entity assume responsibility for all costs incurred by the State or local governments before execution of the agreement, including costs of retaining independent experts to review, analyze and advise the department with respect to the proposal. [2009, c. 648, Pt. A, §1 (NEW).]

[2009, c. 648, Pt. A, §1 (NEW).]

**6. Tolls; fares.** An agreement may authorize the private entity to impose tolls or fares for the use of the transportation facility. The following provisions apply to such an agreement.

A. The agreement must be consistent with the traffic and revenue study required under subsection 4, paragraph F. [2009, c. 648, Pt. A, §1 (NEW).]

B. The agreement must ensure that the transportation facility and any related toll facility are properly operated and maintained in accordance with department standards or standards generally accepted in the transportation industry. [2009, c. 648, Pt. A, §1 (NEW).]

C. The agreement must include provisions governing changes in tolls or fares. [2009, c. 648, Pt. A, §1 (NEW).]

D. The department may require provisions in the agreement that ensure that a negotiated portion of revenues from a toll-generating or a fare-generating transportation facility is returned to the department over the life of the agreement. [2009, c. 648, Pt. A, §1 (NEW).]

[2009, c. 648, Pt. A, §1 (NEW).]

**7. Exercise of powers.** If the department exercises its power of eminent domain for the development and construction of a transportation facility pursuant to this subchapter, the department must retain ownership rights and interests taken. The State may provide maintenance, law enforcement and other services with respect to a transportation facility owned by a private entity when the agreement provides for reasonable reimbursement for such services.

[2009, c. 648, Pt. A, §1 (NEW).]

**8. Term of agreement.** An agreement may not exceed a term of 50 years unless the Legislature, upon the recommendation of the Commissioner of Transportation, approves a longer term.

[2009, c. 648, Pt. A, §1 (NEW).]

**9. Legislative approval.** If the department determines that a public-private partnership proposal and draft agreement meets the standards of this subchapter, the department shall submit to the Legislature a bill that authorizes the agreement. The bill must include a statement that the proposal meets the standards in subsection 4, a summary of the substance of the draft agreement and a description of the nature and amount of state investment, if any, including effects on programmed capital work.

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**10. Information in public record.** Except as provided in subsection 10-A, information obtained by the department under this subchapter is a public record pursuant to Title 1, chapter 13, subchapter 1.

[ 2013, c. 208, §2 (RPR) .]

**10-A. Confidential information.** Information submitted to the department relating to a public-private partnership proposal under this subchapter is confidential and not a public record under Title 1, chapter 13, subchapter 1 if the private entity submitting the information designates the information as being only for the confidential use of the department and if:

A. The information is a trade secret as defined in Title 10, section 1542, subsection 4; or [ 2013, c. 208, §3 (NEW) .]

B. Disclosure of the information would result in a business or competitive disadvantage, loss of business, invasion of privacy or other significant detriment to the private entity to whom the record belongs or pertains. [ 2013, c. 208, §3 (NEW) .]

If legal action is filed to gain access to the information designated as confidential under this subsection, the private entity must defend its designation and the department shall release the information in accordance with the order of the reviewing court. Failure to defend the designation under this subsection constitutes a waiver of confidentiality by the private entity and the department shall release the information.

[ 2013, c. 208, §3 (NEW) .]

**11. Report of proposals.** By February 1st, annually, the department shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a report summarizing all proposals that the department has determined meet the standards of this subchapter or that have been finally rejected during the previous calendar year.

[ 2009, c. 648, Pt. A, §1 (NEW) .]

**12. Rules.** The department may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 648, Pt. A, §1 (NEW) .]

#### SECTION HISTORY

2009, c. 648, Pt. A, §1 (NEW). 2013, c. 208, §§1-3 (AMD).

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